Aramark School Services, Inc. *and* Michigan Council 25, American Federation of State, County and Municipal Employees, AFL–CIO, Petitioner. Case 7–RC–22114

August 1, 2002

DECISION ON REVIEW AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS COWEN AND BARTLETT

On December 10, 2001, the Regional Director for Region 7 dismissed the instant petition pursuant to the successor bar doctrine enunciated in *St. Elizabeth Manor*, 329 NLRB 341 (1999). Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Petitioner filed a timely request for review of the Regional Director's Decision and Order, and Intervenor Michigan Education Association/National Education Association filed a brief in opposition. On February 8, 2002, the Board granted the Petitioner's request for review. The Petitioner and Intervenor thereafter filed timely briefs on review. Additionally, amicus curiae briefs were submitted by the AFL–CIO and Outrigger Hotels and Resorts.

The Board has delegated its authority in this proceeding to a three-member panel.

On July 17, 2002, the Board (Member Liebman dissenting) issued its decision in *MV Transportation*, 337 NLRB No. 129, which overruled *St. Elizabeth Manor.* In light of that decision, we reinstate the petition and remand this proceeding to the Regional Director for further appropriate action consistent with *MV Transportation*.[1]

Dated, Washington, D.C. August 1, 2002

Peter J. Hurtgen,	Chairman
William B. Cowen,	Member
Michael J. Bartlett,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] We reject Intervenor's contention that the principles articulated in *MV Transportation* should not be applied retroactively to this case. The Board's usual practice is to apply new policies and standards "to all pending cases in whatever stage." *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1006–1007 (1958). Under *Securities & Exchange Commission v. Chenery Corp.*, 332 U.S. 194, 203 (1947), the propriety of retroactive application is determined by balancing any ill effects of retroactivity against "the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles." Such a balancing test applied here leads to the conclusion that the Board's usual practice of retroactive application is appropriate.

We additionally deny Intervenor's motion to reopen the record and dismiss petitioner's request for review. It is well established that when a petition is timely filed, the subsequent execution of a collective-bargaining agreement will not serve to bar the petition. The critical inquiry is whether the petition was timely and proper as of the time it was filed. See *Deluxe Metal Furniture*, supra at 999.